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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91226199
Party	Plaintiff Societe des Produits Nestle S.A.
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	05/16/2016
Attachments	Nestle KITCAT 1st Amended Ntc of Opposition.pdf(20273 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**


<p>Société des Produits Nestlé S.A.,</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>Cecilia Farell,</p> <p style="text-align: center;">Applicant.</p>	<p style="text-align: center;"><b>Opposition No.: 91226199</b></p> <p style="text-align: center;"><b>Mark: KITCAT</b></p> <p style="text-align: center;"><b>Serial Nos. 86640048 and 86709574</b></p>
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**FIRST AMENDED NOTICE OF OPPOSITION**

Société des Produits Nestlé S.A. (“Opposer”), a société anonyme organized and existing under the laws of Switzerland, with an address of Case Postale 353, Vevey, 1800, Switzerland, believes that it will be damaged by registration of the mark KITCAT shown in U.S. Trademark Application Serial No. 86640048 for “candles” in Class 4, and U.S. Trademark Application Serial No. 86709574 for “Body cream; Body creams; Body lotion; Body splash; Hair conditioners; Hand cleaning preparations; Hand creams; Hand lotions; Hand soaps; Lip balm; Pet shampoo and conditioner; Shampoos” in Class 3 (together, the “Applications”), and hereby opposes these Applications.

As grounds for its opposition, Opposer alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Since as early as 1939, and well prior to the filing date of the Applications or any date of first use upon which Applicant may rely, Opposer’s predecessor in interest and/or Opposer’s U.S. licensee have used the KIT KAT mark in connection with the marketing and sale of candy bars.

2. Opposer owns United States Trademark Registration No. 1022181 for KIT KAT and Registration No. 1535582 for , both for “wafer fingers in milk chocolate” in Class 30 (collectively the “KIT KAT Mark”).

3. These registrations are valid, subsisting, and incontestable, constituting conclusive evidence of the validity of the marks and registrations, and of Opposer’s ownership of and exclusive right to use the marks in connection with the goods set forth in the registrations.

4. Opposer’s U.S. licensee has sold billions of dollars’ worth of chocolate bars under the KIT KAT Mark and has invested significant resources in advertising and promoting candy bars under this mark.

5. As a result of Opposer’s licensee’s extensive marketing and promotion, coupled with the overwhelming commercial success of the candy bars sold under the KIT KAT mark, Opposer’s KIT KAT Mark has become famous and well known.

**COUNT I**  
**Likelihood of Confusion**  
**(15 U.S.C. § 1052(d))**

6. Opposer realleges and incorporates by reference the preceding allegations of this Notice of Opposition.

7. The KITCAT mark set forth in the Applications so closely resembles Opposer’s prior used and/or registered KIT KAT Mark as to be likely, when used in connection with the goods set forth in the Applications, to cause confusion, or to cause mistake, or to deceive under section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

8. Many candy and confection brands are licensed for use in connection with candies and personal care products. Applicant’s goods and Opposer’s goods are therefore related. As a

result, consumers encountering an mark essentially identical to Opposer's famous KIT KAT mark on Applicant's related goods are likely to mistakenly believe that Applicant's products are sold under license from Opposer or with Opposer's permission.

**COUNT II**  
**Likelihood of Dilution**  
**(15 U.S.C. § 1125(c))**

9. Opposer incorporates by reference the preceding allegations of this Notice of Opposition.

10. Well prior to the filing date of the Applications or any date of first use upon which Applicant may rely, Opposer's distinctive KIT KAT Mark became famous under 15 U.S.C. § 1125(c).

11. Applicant's proposed use and registration of the mark KITCAT, in connection with the goods set forth in the Applications, is likely to cause dilution by blurring of Opposer's famous KIT KAT Mark under section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes that it will be damaged by the registration of the mark shown in the Applications and respectfully requests that the opposition be sustained and that registration to Applicant be denied.

The filing fee, in the amount of \$600, was transmitted electronically with the original submission filed on February 5, 2016. Any deficiency in the fee should be charged to Deposit Account No. 082623.

Dated: May 16, 2016

Respectfully submitted,

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**Attorneys for Opposer**  
Société des Produits Nestlé S.A.

**CERTIFICATE OF SERVICE**

I certify that on May 16, 2016, I served a copy of the above **FIRST AMENDED NOTICE OF OPPOSITION** to the following by Certified U.S. Mail, postage prepaid:

Cecilia Farell  
2972 Zaharias Drive  
Orlando, FL 32837

Barbara A. Adams  
Barbara A. Adams